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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,385	02/02/2004	Raymond J. Mueller	03-006	1144
22927	7590	11/14/2008		
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EXAMINER				
RUDY, ANDREW J				
ART UNIT		PAPER NUMBER		
3687				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/770,385

**Applicant(s)**

MUELLER ET AL.

**Examiner**

Andrew Joseph Rudy

**Art Unit**

3687

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 43-80 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 43-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-5 and 43-80 are pending. Applicant cancelled claims 6-42.

***Election/Restrictions***

2. Applicant's election without traverse of claims 1-5 and 43 in the reply filed on August 13, 2008 is acknowledged.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 67 and 68 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 67, line 2, "presentation slots" is not clear as to its meaning in juxtaposition with the specification and drawings.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al., US 4,654,800.

Hayashi discloses, e.g. Fig. 3, an apparatus comprising a CPU 1, a digital switch, e.g. DS and automatically updating the unit price of an item. It is noted Applicant's apparatus claim 1, and those depending therefrom, requires just means. Clearly, Hayashi comprises such. Official Notice is taken that an apparatus and means have been common knowledge in the advertisement art. Intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have executed the intended use claim language with Hayashi would have been obvious to one of ordinary skill in the art.

7. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Official Notice.

Applicant's apparatus claim 1, and those depending therefrom, requires just means. Clearly, Hayashi comprises such. Official Notice is taken that an apparatus and means have been common knowledge in the advertisement art to implement intended use claim language. It is noted Applicant's means may be no more than paper and pencil. The paper may be viewed as the storage device storing price information that is stored thereon. The processor may be a person's hand using the pencil that generates information and crossing out old prices by dynamically entering new digital

prices, the port may be nothing more than another piece of paper placed below the first piece of paper or some item adapted to receive the first piece of paper. This has been common knowledge in the digital menu art. Intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have executed the intended use claim language with the paper and pencil would have been obvious to one of ordinary skill in the art. It is noted that Official Notice is taken that an apparatus and means having a digital storage capacity has been common knowledge in the art. Implementing to replace a paper and pencil apparatus would have been obvious to one of ordinary skill in the art.

8. Further pertinent references of interest are noted on the attached PTO-892.
9. Applicant's two separate Information Disclosure Statements (IDS's) received February 2, 2004 and April 20, 2004 have been given a cursory reviewed. The sheer volume of such is noted. Applicant is requested to particularly point out the significance of such in juxtaposition with the claim language. Note the attached IDS's.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Joseph Rudy/  
Primary Examiner, Art Unit 3687